PackageX Software Terms

Last Modified: Oct 1, 2022

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. THESE TERMS OF SERVICE REPRESENT A BINDING AGREEMENT (THE "***AGREEMENT***") ENTERED INTO BETWEEN PACKAGEX, INC., WITH ITS PRINCIPAL OFFICES AT 500 7TH AVENUE, 8TH FLOOR NEW YORK, NY 10018 ("***PACKAGEX***") AND THE ENTITY OR PERSON IDENTIFIED ON AN ORDER FOR SERVICES (EACH, AN "***ORDER***"). THIS AGREEMENT BECOMES EFFECTIVE AS OF THE DATE WHEN AUTHORIZED REPRESENTATIVES OF BOTH PARTIES HAVE EXECUTED AN ORDER (THE "***EFFECTIVE DATE***"). IF THOSE AUTHORIZED REPRESENTATIVES EXECUTE AN ORDER ON DIFFERENT DATES, THE EFFECTIVE DATE SHALL BE THE LATER DATE, OR THE DATE AS OF WHICH PACKAGEX FIRST PROVIDES SERVICES UNDER THIS AGREEMENT, WHICHEVER FIRST OCCURS.

1. DEFINITIONS.

1.1   "***Access Rights***" are contractual rights to access and receive access to the Subscription Services according to the technical procedures and protocols established according to this Agreement. The scope of any particular Access Rights may be further defined by the terms the applicable Order pursuant to which such Access Rights are purchased.

1.2   "***Additional Services***" means services that are related to Customer's use of the Subscription Services, which may include without limitation, implementation, configuration, product enhancement, training or business consulting services, which may be offered on a one-time or subscription basis.

1.3   "***Affiliate***" means any entity controlled by, controlling, or under common control with a party to this Agreement during the period such control exists, where "***control***" means the power to direct the operation, policies and management of an entity through the ownership of at least fifty percent (50%) of the voting stock or other ownership interests of such entity or the ability, by voting securities, contract or otherwise, to elect a majority of the board of directors or other governing body of such entity or to direct or cause the direction of the management and policies of such entity.

1.4   "***Applicable Data Protection Laws***" means applicable laws and regulations including (where applicable) the EU General Data Protection Regulation (2016/679) and any applicable national implementing laws (including the UK Data Protection Act 2018), in each case as amended, consolidated, re-enacted or replaced from time to time.

1.5   "***Authorized Users***" means employees or contractors who are acting on Customer's behalf within the scope of access rights granted to Customer under this Agreement.

1.6   "***Customer***" means the entity who executes an Order for Services.

1.7   "***Customer Data***" has the meaning ascribed to it in Section 5.1 of this Agreement.

1.8   "***Customer Meta-Data***" means meta-data derived from Customer Data which may include, by way of example only, file modification dates, audit trails, and the number of times a file has been accessed).

1.9   "***Deliverables***" has the meaning ascribed to it in Section 4 of this Agreement.

1.10   "***Documentation***" means the user guidelines and other user documentation related to the use or operation of the Subscription Services, each as officially published and made available by PackageX electronically via the Services or otherwise in writing.

1.11   "***Non-Identifiable Aggregated Data***" means anonymized generic statistical information derived from such Customer Meta-Data (but not the Customer Data itself) aggregated with statistical information from other customers.

1.12   "***Services***" means the Subscription Services and the Additional Services.

1.13   "***Software***" means PackageX proprietary platform of servers, software and technology that is hosted, served, or managed by PackageX or its third-party service provider and furnished to Customer.

1.14   "***Subscription Services***" means the particular online services identified in an Order, to be performed by means of PackageX's proprietary methodologies and systems, to which Access Rights are purchased by Customer, and to which access is provided by PackageX via its Web sites. Customer acknowledges that the Subscription Services may include access to particular functional modules of the Software, but not to other modules, as may be indicated in the applicable Order.

1.15   "***Subscription Term***" means the subscription term identified in the applicable Order.

1.16   "***Term***" has the meaning ascribed to it in Section 7.1 of the Agreement.

1.17   "***Trial Services***" has the meaning ascribed to it in Section 3.3 of this Agreement.

1.18   "***Order***" means an order for the purchase of Services that is executed by PackageX and Customer or its Affiliates.

1.19   "***Website***" means https://ww.packagex.io and any links to various sections thereon.

2. ORDERS. Subject to the terms and conditions of this Agreement, PackageX agrees to sell, and Customer agrees to purchase, Access Rights for Subscription Services, and other Services, each as identified in an Order. Each Order shall be binding upon the parties only after mutual execution and each Order shall be considered an integral part of this Agreement. In the event of a conflict between the provisions of this Agreement and the terms of any Order, the Order shall take precedence but only for the Services ordered therein. No pre-printed or "boilerplate" provisions of any purchase order or other document provided by Customer with or as part of any Order or Statement of Work shall be binding upon PackageX. Customer's Affiliates may enter into Orders, subject to the terms and conditions of this Agreement. By executing an Order, such Affiliate shall be deemed to be "Customer" for the purposes of this

Order and agrees to be bound by all terms, conditions and obligations of Customer contained in this Agreement and the applicable Order.

3. SUBSCRIPTION SERVICES.

3.1 Access to the Subscription Services. During the Subscription Term, PackageX agrees to provide Customer with access to certain features and functions of the Software, as set forth in an Order. Customer may only access the Subscription Services during the Subscription Term and may only use the Software for its internal business use and subject to any use restrictions set forth in the Order.

3.1.1. Service Levels and Support. PackageX will support the Subscription Services in accordance with its standard level of service as described on its Website or as agreed in the Order. (the "**SLA**").

3.1.2. Authorized Users. Customer's Authorized Users may access the Subscription Services solely through use of a web browser and the login credentials provided by PackageX to Customer. Customer is fully responsible for compliance with this Agreement by, as well as the acts and omissions of, all users who access the Subscription Services under their Authorized User login credentials, to the full extent as if such end users are employees or agents acting on Customer's behalf within the scope of their duties. Customer shall not authorize access to or permit use of the Subscription Services by persons other than Authorized Users. Except as set forth in an Order, Customer shall ensure that no more than one Authorized End User will have access to or will use each Authorized User login credentials. PackageX may, at any time and without any liability to Customer, suspend an end user's access to the Subscription Services in the event PackageX reasonably believes that such end user has violated any provision of this Agreement.

3.1.3. Documentation. PackageX grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license during the Subscription Term to reproduce copies of its Documentation, solely for use by Customer in connection with the exercise of rights granted in this Agreement. No right is granted to distribute, publish, modify, adapt, translate or create derivative works of the Documentation. Customer shall accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices that are contained within any copies of the Documentation.

3.1.4. Procedures and Technical Protocols. PackageX will specify to Customer procedures according to which Customer may access and use the Subscription Services, including, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable to allow Customer Content to be sent to the Subscription Services.

3.1.5. Hosting; Access. During the Subscription Term, PackageX will host, operate, and maintain the Software. PackageX will perform routine backups of the Software. If any Customer Data is corrupted, lost, or deleted from the Software, PackageX's sole responsibility shall be to use reasonable efforts to restore promptly any Customer Data from backup media as soon as practicable. Customer acknowledges that it is primarily responsible for backing up the Customer Data and that PackageX will not have any liability to Customer for any failure to provide a backup of Customer Data except as set forth in the preceding sentence. Customer is responsible for procuring and operating all computer systems, software, and telecommunications services required to meet the minimum technical specifications necessary to access and use the Subscription Services. The Subscription Services operate on one or more third party cloud computing platforms and PackageX shall have the right to change or add to the cloud computing platforms on which its Subscription Services operate.

3.1.6. Modifications. PackageX may make modifications to the Subscription Services without prior notice to Customer, including without limitation security patches, added functionality, and other enhancements.

3.2 Restrictions. Customer shall not, directly or indirectly: (i) remove any notice of proprietary rights from the Subscription Services, (ii) modify or reverse engineer any part of the Subscription Services, (iii) except to the limited extent applicable laws specifically prohibit such restriction, decompile, attempt to derive the source code or underlying ideas or algorithms of any part of the Subscription Services, attempt to recreate the Subscription Services or use the Subscription Services for any competitive purpose, (iv) copy, modify, translate or otherwise create derivative works of any part of the Subscription Services, (v) sell, resell, encumber, rent, lease, time-share, distribute, transfer or otherwise use or exploit or make available any of the Subscription Services to or for the benefit of any third party, or (vi) use the Subscription Services to infringe on the intellectual property rights, publicity rights, or privacy rights of any third party, or to store defamatory, trade libelous, or otherwise unlawful data. Customer's authorized use of the Subscription Services is subject to the purchased quantities and features set forth in the applicable Order for the Subscription Services, and any usage guidelines and acceptable use policies to the extent applicable to Customer's use of the Subscription Services.

3.3 Trial or Free Services. If Customer is using a free trial, a pilot or other proof of concept version of the Subscription Services, a beta version of the Subscription Services, or using the Subscription Services on any other free-of-charge basis as specified in an Order including any related support services to the extent provided by PackageX in its sole discretion (collectively, "**Trial Services**"), PackageX makes such Trial Services available to Customer until the earlier of (i) the end of the free trial or proof of concept period or beta testing period as communicated by PackageX, (ii) the start date of any purchased version of such Subscription Services, or (iii) written notice of termination from PackageX ("**Trial Services Period**"). PackageX grants Customer, during the Trial Services Period, a non-exclusive, non-transferable license (without the right to sub-license) to access and use the Trial Services for Customer's internal evaluation purposes in accordance with the Documentation. Customer is authorized to use Trial Services only for evaluation and not for any business or productive purposes, unless otherwise authorized by PackageX in writing. Any data Customer enters into the Trial Services and any configurations made to the Trial Services by or for Customer during the term of such Trial Services will be

permanently lost unless Customer (a) has purchased a subscription to the same Subscription Services as covered by the Trial Services or (b) exports such data or configurations before the end of such free period. There is no guarantee that features or functions of the Trial Services will be available, or if available will be the same, in the general release version of the Service, and Customer should review the Service features and functions before making a purchase. PackageX will be under no obligation to provide Customer any maintenance or support services with respect to the Trial Services. NOTWITHSTANDING ANYTHING TO THE CONTRARY, PACKAGEX PROVIDES THE TRIAL SERVICES "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND. TO THE EXTENT PERMITTED BY LAW, PACKAGEX DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CUSTOMER ASSUMES ALL RISKS AND ALL COSTS ASSOCIATED WITH ITS USE OF THE TRIAL SERVICES. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN CASE OF ANY DISSATISFACTION OR PACKAGEX'S BREACH OF THE AGREEMENT WITH RESPECT TO SUCH TRIAL SERVICES IS TERMINATION OF THE TRIAL SERVICES. ANY OBLIGATIONS ON BEHALF OF PACKAGEX TO INDEMNIFY, DEFEND, OR HOLD HARMLESS UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION PACKAGEX'S OBLIGATIONS UNDER SECTION 9) ARE NOT APPLICABLE TO CUSTOMERS USING TRIAL SERVICES.

3.4 Third Party Materials. The Subscription Services include open source software programs that are made available by third parties under their respective open source licenses as indicated in the Documentation ("***Third Party Materials***" and "***OSS Licenses***", respectively). PackageX warrants that such Third Party Materials will not diminish the license rights provided to Customer herein, or limit Customer's ability to use the Services in accordance with the Documentation, or create any obligation on the part of Customer to license Customer's software or products under any open source or similar license. Nothing herein shall derogate from mandatory rights Customer may have under any OSS Licenses, if any.

3.5 Mobile Device. Use of the Subscription Service may be available through a compatible mobile device, which may require the installation of the Mobile App. Customer's use of the Mobile App is governed by the Mobile End-User License Agreement, which is incorporated herein by reference and it available on the Website.

4.   ADDITIONAL SERVICES. Customer may purchase Additional Services through mutual execution of an Order, with additional terms as may be set forth in a statement of work. If the Additional Services involve the delivery of any work product, developments, inventions, technology or materials (collectively, "***Deliverables***") except to the extent that such Deliverables include Customer Data or Customer's Confidential Information, PackageX shall retain ownership of all Deliverables. PackageX grants to Customer a non-exclusive right and license to use the Deliverables in accordance with the rights and restrictions set forth in Section 3.1 of this Agreement.

5. CUSTOMER DATA.

5.1   Customer Data. As between the parties, Customer owns all right, title and interest in all data and/or content created or provided by Customer and its Authorized Users, including the output from the Subscription Services resulting from the processing of such data ("***Customer Data***"). Nothing in this Agreement shall be construed to grant PackageX any rights in Customer Data beyond those expressly provided herein. As between PackageX and Customer, Customer is solely responsible for (i) the content, quality and accuracy of Customer Data as made available by Customer and by Authorized Users, (ii) providing notice to data subjects with regards to how Customer Data will be collected and used for the purpose of the Subscription Services, (iii) ensuring Customer has a valid legal basis for processing Customer Data and for sharing Customer Data with PackageX (to the extent applicable), and (iv) ensuring that the Customer Data as made available by Customer complies with Applicable Data Protection Laws.

5.2 Use of Customer Data. Customer grants PackageX the limited, non-exclusive right to use the Customer Data solely for the purpose of providing the Services to Customer (including routine actions taken to enable data backups and disaster recovery and business continuity procedures). PackageX will process Customer Data in compliance with Applicable Laws and will not sell, rent, or commercially exploit any Customer Data for any purpose whatsoever except as specified in this Agreement.

5.3 Use of Customer Meta-Data. Customer grants PackageX the limited, non-exclusive right to view, and use the Customer Data to create Customer Meta-Data, for the purpose of providing and improving the Subscription Services.

5.4 Use of Aggregated Data. Customer grants PackageX the right to collect and use Non-Identifiable Aggregated Data for PackageX's reasonable business purposes, including without limitation for analyzing customer needs and improving the Services.

5.5 Customer agrees that PackageX and its affiliates may use their business name, trade name, service marks and trademarks in connection with its performance of the Services, including, without limitation, references in PackageX and its affiliatrs marketing materials and on its website.

5.6 Processing of Personal Data. To the extent required by applicable laws, Customer shall provide, and PackageX shall process, personal data created or provided by Customer to PackageX in compliance with the Data Processing Addendum found on the Website which is hereby incorporated into this Agreement ("***DPA***"). In particular, if Customer is established in the European Economic Area ("***EEA***") or in the United Kingdom ("***UK***") and will, in connection with the Services, provide PackageX with personal data relating to an individual located within the EEA or in the UK, the DPA will apply. Without limitation to the foregoing, Customer shall ensure that its instructions comply with all laws, regulations and rules applicable to such personal data.

6. FEES.

6.1 Fees and charges. All fees and charges are as per the applicable Order. All fees and charges are payable in US Dollars unless otherwise agreed in the Order. Standard price plans may be available publicly on our Website and other third party websites and is subject to change from time to time. PackageX also reservices the right to change pricing of its products and services at its sole discretion upon 60 days written notice in the event of increase in cost of providing Service outside of the reasonable control of PackageX. If Customer does not object or does not respond to the request within 60 days, such Fees will go then go into effect. If Customer objects, the Parties shall negotiate in good faith to amend the relevant Fees as necessary to address the increased costs. If the Parties are not able to agree on such amendment after 90 days from the original notification, PackageX shall be, excused from its obligation to provide the affected Services.

6.2 Payment Terms. Fees for the Services are due monthly, in advance, net fifteen (15) days from date of invoice unless otherwise agreed between the parties as part the Order or any other agreement. Customer consents to the use of a reputable third-party payment processing service in connection with the receipt and processing of payments for the Services. Fees do not include sales, use, value added or other excise tax. Customer is responsible for payment of all such taxes based on fees paid or payable hereunder (but not taxes based on PackageX's gross revenues or net income) together with any interest on such taxes if not due to PackageX's delay. Delinquent payments may be assessed interest at the rate of three-and-one-half percent (3.5%) per month (or the highest rate permissible by law if less) from the payment due date until paid in full.

6.3 Payment Defaults. If a Customer does not pay any valid invoices when due and such invoices are not disputed in good faith, then PackageX has the express right to immediately suspend Services or terminate the Agreement. PackageX will attempt in good faith to work with Customer to recover any outstanding dues, however, in case of payment default as determined in sole discretion of PackageX, the PackageX among others has the right to refer any unpaid invoices to a collection agency as may be allowed par applicable laws and regulations, report this default to credit rating agencies and Better Business Bureau and pursue this debt in the court of competent jurisdiction.

6.4 Reasonable Use of Services. Fees for the Subscription Services are based on "normal usage" of the Subscription Services in a manner consistent with its intended purposes and as described in the Documentation. If Customer's usage is in a manner outside of the intended purposes or otherwise exceeds the quantities listed in the Order, then PackageX reserves the right to require Customer to either comply with such limits or pay an additional mutually agreed fee, not to exceed PackageX's list price for such additional usage.

7. SUBSCRIPTION PERIOD

7.1 Monthly Subscription. The minimum Subscription Term is one (1) month ("Monthly Subscription"), for which the subscription period shall be one month commencing on the first day of the calendar month immediately following the execution of this Agreement unless otherwise stated in the Order. If the Customer does not terminate the Monthly Subscription in accordance with the terms and conditions of this Agreement, the Monthly Subscription shall be renewed automatically for the next calendar month and the same shall apply thereafter.

7.2 Annual Subscription. For a plan with 12 month or 1 year commitment ("Annual Subscription"), the subscription period shall be one year from the first day of the calendar month immediately following the execution of this Agreement unless otherwise stated in the Order. If the Customer does not terminate the Annual Subscription in accordance with the terms and conditions of this Agreement, the Annual Subscription shall be renewed automatically for the next year and the same shall apply thereafter.

7.3 Multi-Year Subscription. For any Customer with a Subscription Term exceeding 1 Year (Multi-Year Subscription"), the subscription period shall be as per the Order.

8. TERM AND RENEWAL.

8.1 Term of the Agreement. Unless sooner terminated in accordance with the provisions of this Section 7, the term of this Agreement commences on the Effective Date and continues until all Subscription Terms as set forth in the applicable Order(s), including any renewals thereof, have been terminated or expired (the "***Term***"). PackageX may offer Subscription Terms of varying lengths depending on the product and plan features from time to time as per its sole discretion.

8.2   Auto -Renewal and Notice of Non-Renewal. Unless otherwise set forth on an Order, the Subscription Term on each Order will automatically renew for successive monthly or annual periods, unless either party gives the other party notice of non-renewal at least (i) fifteen (15) days prior to end of the Subscription Term for Customers on Monthly Subscription; or (ii) sixty (60) days prior to the end of the Subscription Term for Customers on Annual Subscription or Multi-Year Subscription. All such notices for non-renewal have to be sent to support@packagex.io

8.3   Termination for Convenience. Unless otherwise provided herein or in the Order From, early termination of this Agreement for convenience is not permitted during a Subscription Term.

8.4   Termination or Suspension of Services for Cause. Either party may terminate the Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. Further, PackageX may terminate the Agreement and/or suspend the Services upon written notice to Customer if PackageX has not received payment for such Services and if such failure is not cured within the period of time stated in PackageX written notice advising of such failure.

8.5   Effect of Termination. Upon termination of the Services: (i) Customer will have no further right to access or use the Services; and (ii) each party will use commercially reasonable efforts to return any tangible Confidential Information and destroy any electronic Confidential Information of the other party within its possession or control Customer acknowledges that, prior to termination, Customer is responsible for exporting any Customer Data to which Customer desires continued access after termination, and PackageX shall have no liability for any failure of Customer to retrieve such Customer Data and no obligation to store or retain any such Customer Data. The provisions of Sections 1, 3.2, 6, 8, 9.3, 12, 13 and 14 shall survive termination. Following termination of the Services, PackageX may immediately deactivate Customer's account and following a reasonable period may delete Customer's account and all Customer Data from the Services.

9. CONFIDENTIALITY.

9.1   Confidential Information. Each party may have access to information that is confidential or proprietary to the other party and/or its Affiliates. For purposes of this Agreement, "*Confidential Information*" means the confidential information of a party and/or its Affiliates which is disclosed to the other party in connection with this Agreement, whether disclosed in written, oral, electronic, visual or other form, which is identified as confidential at the time of disclosure or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including without limitation information regarding a party's business, operations, finances, technologies, current and future products and services, pricing, personnel, customers and suppliers, the Customer Data, PackageX's Services and each Party's intellectual property. Confidential Information excludes information to the extent such information (i) is or becomes part of the public domain or otherwise is publicly available through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and was not obtained directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

9.2 Restrictions on Use and Disclosure of Confidential Information. The receiving party will use the disclosing party's Confidential Information solely as necessary in connection with the performance of this Agreement. The receiving party shall maintain the confidentiality of the disclosing party's Confidential Information using at least the same degree of care that such party uses to protect its own Confidential Information of a similar nature, and shall restrict disclosure of the disclosing party's Confidential Information to its employees, consultants, contractors, agents and representatives who have a need to know such information and are bound by obligations of confidentiality and non-use no less restrictive than those set forth herein; provided, that a party may disclose the disclosing party's Confidential Information if required by law and provided the receiving party provides prompt notice of such requirement and disclosure to the other party to the extent allowed by law. The receiving party shall have the right to disclose Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body provided that the receiving party provides prompt, advance written notice thereof to enable the disclosing party to seek a protective order or otherwise prevent such disclosure. In the event such a protective order is not obtained by the disclosing party, the receiving party shall disclose only that portion of the Confidential Information which its legal counsel advises that it is legally required to disclose. Confidential Information so disclosed shall continue to be deemed Confidential Information.

9.3   Equitable and Injunctive Relief. If a party breaches any of its obligations with respect to confidentiality or use or disclosure of Confidential Information hereunder, the other party is entitled to seek equitable and injunctive relief in addition to all other remedies that may be available to protect its interest without having to post a bond or prove irreparable harm.

10.   WARRANTIES AND DISCLAIMERS.

10.1 Limited Services Warranty. During the term of this Agreement, PackageX warrants that the Subscription Services will perform in substantial conformity with the Documentation, and that the Subscription Services are not designed to contain viruses, worms, Trojan horses or other unintended malicious or destructive code, or any code designed to intentionally cause the Subscription Services to stop functioning. PackageX further warrants that it shall maintain and enforce reasonable safety and security procedures in providing the Subscription Services that are compliant with applicable industry standards for such services. Customer shall be required to report any breach of warranty to PackageX within a period of thirty (30) days of the date on which the incident giving rise to the claim occurred. PackageX's sole and exclusive liability, and Customer's sole and exclusive remedy, for breach of this warranty will be for PackageX, at its expense, to use reasonable commercial efforts to correct such nonconformity within thirty (30) days of the date that notice of the breach was provided; and, if PackageX fails to correct the breach within such cure period, Customer may terminate the affected Order and, in such event, PackageX shall provide Customer with a pro-rata refund of any unused pre-paid fees paid for the period following termination as calculated on a monthly basis.

10.2 Compliance with Law. Each party shall comply with all applicable, laws and regulations in connection with the performance of its obligations and the exercise of its rights under this Agreement.

10.3 Disclaimer. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN BY PACKAGEX WITH RESPECT TO THE SERVICES OR THIS AGREEMENT. PACKAGEX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING WITHOUT LIMITATION WARRANTIES THAT THE SERVICES ARE MERCHANTABLE, WILL OPERATE UNINTERRUPTED OR FREE OF DEFECT OR ERROR, NON-INFRINGING, OR FIT FOR ANY PARTICULAR PURPOSE. PACKAGEX DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OR COMPLETENESS OF THE SERVICES. CUSTOMER AGREES THAT ITS PURCHASES HEREUNDER ARE FOR THE CURRENTLY AVAILABLE SERVICES AND ARE NEITHER CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES NOR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY PACKAGEX REGARDING FUTURE FUNCTIONALITY OR FEATURES. PACKAGEX WILL HAVE NO LIABILITY FOR DELAYS, FAILURES OR LOSSES ATTRIBUTABLE OR RELATED IN ANY WAY TO THE USE OR IMPLEMENTATION OF THIRD- PARTY SOFTWARE OR SERVICES NOT PROVIDED BY PACKAGEX.

11.   INDEMNIFICATION.

11.1 Infringement Indemnity. PackageX shall indemnify and defend Customer and its Affiliates, officers, directors and employees (the "***Customer Indemnified Parties***") against all third-party claims, suits and proceedings resulting from Customer's use of the Services in accordance with this Agreement and Documentation violating, misappropriating, or infringing such third party's patent, copyright, trademark, trade secret or other intellectual property right, and all directly related losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees); provided that PackageX shall not be responsible for any Claim to the extent arising from (i) use of the Services in violation of the terms of this Agreement, (ii) Customer's use of the Services in violation of Applicable Data Protection Laws, (iii) Customer's use of the Services in combination with software, hardware, systems or data not required by the Documentation (iv) PackageX's compliance with specifications, requirements or requests of Customer, or (v) Customer's gross negligence or willful misconduct. If the Services become, or in PackageX's opinion are likely to become, the subject of a valid claim of infringement or the like under any applicable law, PackageX shall have the right, at its option and expense, either to (a) obtain for Customer a license permitting the continued use of the Services, (b) replace or modify the Services so that they become non-infringing, or (c) if neither of the foregoing options are available in a timely manner on commercially reasonable terms, terminate the affected Order and provide Customer with a pro-rata refund of any unused pre-paid fees paid for the period following termination as calculated on a monthly basis.

11.2 Customer Data and Use Indemnity. Customer shall defend, at its expense, any claims, suits and proceedings brought by a third party against PackageX and/or its Affiliates or their officers, directors and employees (the "***PackageX Indemnified Parties***") arising from an alleged infringement or violation by the Customer Data of a third party patent, copyright or trade secret, or PackageX's use of the Customer Data in accordance with the terms of this Agreement; and Customer shall indemnify and hold the PackageX Indemnified Parties harmless against all damages and costs awarded against the PackageX Indemnified Parties in connection with such claim, suit or proceeding.

12. Indemnification Process and Exclusivity. A party's indemnification and defense obligations herein will become effective upon, and are subject to, (a) the indemnified party's prompt notification to the indemnifying party of any claims, suits or proceedings (a "Claim") in writing, and (b) the indemnified party providing the indemnifying party with full and complete control, authority and information for the defense of the Claim, provided that the indemnifying party will have no authority to enter into any non- monetary settlement or admission of indemnified party's wrongdoing on behalf of the indemnified party without the indemnified party's prior written consent (not to be unreasonably withheld). At the indemnifying party's written request, the indemnified party shall reasonably cooperate with the indemnifying party in defending or settling any Claim. The rights and remedies set forth in this Section 9 state a party's sole and exclusive liability and the other party's sole and exclusive rights and remedies with regard to any Claims arising out

of or relating to this Agreement.

13. Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT FOR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, TORT OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF OR DAMAGE TO SOFTWARE OR DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES FURNISHED HEREUNDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT FOR ANY CLAIM TO THE EXTENT ARISING FROM OR IN CONNECTION WITH (A) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (B) A BREACH OR VIOLATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS BY THE OTHER PARTY, (C) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 9 ABOVE, OR (D) PERSONAL INJURY, DEATH OR DAMAGE TO TANGIBLE PROPERTY, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY HEREUNDER EXCEED THE TOTAL OF THE FEES PAID BY CUSTOMER TO PACKAGEX IN THE TWELVE-MONTH PERIOD IMMEDIATELY PROCEEDING THE EVENTS GIVING RISE TO A CLAIM. THE LIMITATIONS OF LIABILITY IN THIS PARAGRAPH APPLY WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER STATUTE OR OTHERWISE.

14. SERVICE SUGGESTIONS. To the extent that Customer provides PackageX with ideas or suggestions for improvements or changes to the Services which constitute intellectual property rights under applicable law ("*Suggestions*"), Customer hereby assigns to PackageX ownership of such Suggestions and PackageX will have sole discretion as to whether and how to implement such Suggestions into the Services.

15. GENERAL PROVISIONS.

15.1 Notices. All notices under this Agreement shall be made in writing and delivered to each party at the address under its signature hereto. Notices shall be deemed delivered (i) upon personal delivery with signature required, (ii) one Business Day after they have been sent to the recipient by reputable overnight courier service (charges prepaid and signature required), or (iii) upon successful transmission of an email containing such notice if sent between 9 a.m. and 5 p.m., local time of the recipient, on any Business Day, and as of 9 a.m. local time of the recipient on the next Business Day if sent at any other time, or (iv) three Business Days after deposit in the mail. "*Business Day*" as used in this Section 14.1 shall mean any day other than Saturday, Sunday or a day on which banking institutions are not required to be open in the State of New York.

15.2 Entire Agreement. This Agreement together with each Order represent the entire agreement between Customer and PackageX with respect to the subject matter hereof, and supersede all prior proposals, representations and agreements, whether written or oral, with respect thereto. This Agreement shall govern with respect to all Orders and forms of purchases, whether submitted through electronic transmissions or otherwise, unless otherwise agreed by both parties in writing. The terms and conditions of this Agreement shall take precedence over any conflicting terms in the Order (or, an agreement between PackageX and the Reseller, if applicable) unless the Order (or the Reseller's agreement) expressly amends this Agreement and is signed by both parties. Any waiver, amendment, or modification of any right or remedy, in whole or in part under this Agreement, or any additional or different terms in any purchase orders, acknowledgments or other documents other than the Order, will not be effective unless expressly agreed to by both parties in writing or electronic form. If Customer issues a purchase order in connection with an Order, such purchase order shall be solely for Customer's internal administrative purposes and to facilitate payment. In no event shall the terms of such purchase order modify or become part of these Terms of Service or become binding on PackageX even if PackageX signs an acknowledgment copy of such purchase order.

15.3 Assignment and Subcontractors. Neither Party may assign any of its rights or obligations under this Agreement without the other Party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign any and all of its rights and obligations under this Agreement to a successor in interest in the event of a merger or acquisition or to an Affiliate, upon prior written notice to the other Party. The terms of this Agreement shall be binding upon the permitted successors and assigns of each party. PackageX may use subcontractors in connection with the performance of the Services provided that it shall be responsible for the acts and omissions of its subcontractors to the same extent as it would be responsible hereunder for its own acts and omissions.

15.4 Publicity. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that PackageX may use Customer's name and logo on its website, or promotional marketing materials as a current or former customer. Company agrees that nothing in this Agreement shall give any right, title, or interest in or to Customer's trademarks other than the right to use such trademarks in the manner

contemplated herein.

15.5 Independent Contractors. The relationship of the parties to this Agreement is that of independent contractors. Neither Customer nor Customer's employees, consultants, contractors, or agents are agents, employees, partners or joint ventures of PackageX, nor do they have any authority to bind PackageX by contract or otherwise to any obligation. Further, they shall not represent the relationship to the contrary, either expressly, implicitly, by appearance or otherwise.

15.6 Non-Exclusive. The licenses and rights granted by PackageX to Customer in this Agreement are non-exclusive, and PackageX may itself compete with Customer and may grant licenses and rights to third parties who may compete with Customer, in connection with the sale, distribution, resale, or licensing of the Services.

15.7 Governing Law and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of New York excluding its conflict of law provisions. To the extent not prohibited by law, each of the Parties hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement.

15.8 Force Majeure. Neither party shall be liable for any breach of this Agreement to the extent that such breach arises from factors outside its reasonable control. Customer's subscription to the Services is predicated on Customer's use of cloud computing services provided by a third-party cloud service provider, and PackageX will not be responsible for the acts or omissions of Customer's cloud service provider.

15.9 Severability. It is intended that this Agreement shall not violate any applicable law and the unenforceability or invalidity of any provision (other than the provisions obligating Customer to make payments to PackageX) shall not affect the force and validity of the remaining provisions and such provisions determined to be invalid shall be deemed severed from this Agreement and, to the extent possible, be replaced with terms which as closely as possible approximate the interest and economic intent of such invalid provisions.